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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

YE, LIN

ART UNIT	PAPER NUMBER
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2615

DATE MAILED: 02/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/008,753	Applicant(s) KOLLIAS ET AL.	
	Examiner Lin Ye	Art Unit 2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-24 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-24 filed on 12/9/05 have been considered but are moot in view of the new ground(s) of rejection.

For claim 7, a response is considered necessary for the applicant's arguments since the primary reference, Lucchina, will continue to be used to meet several of the claimed limitations.

The applicant argues that the Lucchina reference does not disclose a method of promoting a skin care product to an individual (See applicant's REMARKS, page 7, lines 30-32)

In response to applicant's arguments, the recitation "**promoting** a skin care product" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone (See MPEP § 2111.02 [R-3], II. Preamble statements reciting purpose or intended use).

The applicant also argues that the Lucchina reference does not suggest or show the resulting photographs to study subjects with the suggestion of skin care products based upon such photographs, because the Lucchina reference shows the skin care product had already been chosen prior to the start of the study.

The examiner disagrees. The examiner understands the Lucchina reference shows the skin care products (clindamycin or vehicle) had already been using for evaluations.

However, the claim 7 never states suggesting skin care products whether before or after the skin care products had been using for evaluations. The Lucchina reference discloses that suggesting skin care products (clindamycin) to patients based upon the person's review of the fluorescence photograph image after the 12-weeks period evaluations implicitly, because the clindamycin-treated group had a larger decrease in fluorescence during 12-week period than did the vehicle-treated group (See Lucchina reference, page 59, left column, lines 8-25 and page 63, left column, lines 5-27).

2. Since a new ground of rejection is being applied against unamended claims, this action is not made final.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Martens et al. U.S. Patent 5,363,854.

Referring to claim 1, the Martens reference discloses in Figure 1, a method of photographing the skin of a person, said method comprising: (i) illuminating said skin with at least one light source (illumination device 11, see Col. 3, lines 64-67), wherein said light

source either emits substantially only light having a wavelength from about 380 to about 430 nm or emits light through a filter that emits substantially only light having a wavelength from about 380 to about 430 nm (e.g., the illumination device 11 illuminates ultraviolet light in a wavelength 380nm); and (ii) capturing the image of said illuminated skin with a camera (video camera 12); wherein the light entering said camera is also filtered with a long pass filter (filter 123 has a transmission range of 450 to 490 nm which is above 400nm, see Col. 4, lines 44-46), wherein said long pass filter substantially eliminates light having a wavelength below about 400 nm (e.g., record the fluorescence picture at wavelength above the 400nm, see Col. 5, lines 33-45).

Referring to claim 2, the Martens reference discloses wherein said light source emits light through a filter (filter 114 transmits ultraviolet light, see Col. 4, lines 20-22) that emits substantially only light having a wavelength from about 380 to about 430 nm (e.g., the illumination device 11 illuminates ultraviolet light in a wavelength 380nm).

Referring to claim 3, the Martens reference discloses wherein said long pass filter (filters 123 or 124) filters such light prior to entering the lens of such camera (12) as shown in Figure 1.

Referring to claim 4, the Martens reference discloses wherein said long pass filter (filter 123) substantially eliminates light having a wavelength below about 440 nm (the filter 123 has transmission range of 450 to 490nm, see col. 4, lines 44-45).

Referring to claim 5, the Martens reference discloses all subject matter as discussed in respected same comments to claim 4.

Referring to claim 6, the Martens reference discloses all subject matter as discussed in respected same comments to claim 4.

5. Claims 7, 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Lucchina et al. "Fluorescence photography in the evaluation of acne", Journal of the American Academy of Dermatology Vol. 35, Number 1, pp. 58-63 (noted that this reference is cited in the applicant's IDS filed on 8/30/04).

Referring to claim 7, the Lucchina reference discloses in Figure 1, a method of evaluation of acne care product (See page 58), said method comprising: (i) illuminating said skin (skin of the patients face) with at least one light source (fluorescence Flash), wherein said light source (UV light source) either emits substantially only light having a wavelength from about 380 to about 430 nm or emits light through a filter that emits substantially only light having a wavelength from about 380 to about 430 nm (e.g., UV light source emits a UV light at a wavelength 380nm, see page 59, right column, lines 4-7); (ii) capturing the image of said illuminated skin with a camera, wherein the light entering said camera is also filtered with a long pass filter; wherein said long pass filter substantially eliminates light having a wavelength below about 400 nm (e.g., the filter passes visible light having range 400-700nm, cuts out UVA & IR which wavelength below about 400nm); (iii) presenting said image to said person as shown in Figure 2; and (iv) suggesting skin care products based upon said person's review of said image (e.g., suggesting skin care products, e.g., clindamycin to patients based upon the person's review of the fluorescence photograph image after the 12-weeks period evaluations, because the clindamycin-treated group had a larger decrease in

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fluorescence during 12-week period than did the vehicle-treated group. See Lucchina reference, page 59, left column, lines 8-25 and page 63, left column, lines 5-27).

Referring to claim 9, the Lucchina reference discloses all subject matter as discussed in respected to claim 7, and the Lucchina reference discloses wherein said light source emits light through a filter that emits substantially only light having a wavelength from about 380 to about 430 nm (Filter passes UVA light such as at 380nm, cut out visible & IR) as shown in Figure 1.

Referring to claim 10, the Lucchina reference discloses all subject matter as discussed in respected same comments to claim 9.

Referring to claim 11, the Lucchina reference discloses all subject matter as discussed in respected to claim 7, and the Lucchina reference discloses wherein said long pass filter filters such light prior to entering the lens of such camera as shown in Figure 1.

Referring to claim 12, the Lucchina reference discloses all subject matter as discussed in respected same comments to claim 9.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucchina et al.

“Fluorescence photography in the evaluation of acne”, Journal of the American Academy of Dermatology Vol. 35, Number 1, pp. 58-63.

Referring to claim 8, the Lucchina reference discloses all subject matter as discussed in respected to claim 7, except the Lucchina does not explicitly disclose further comprises presenting said person with one or more questions relating to said presented image and said suggestion of skin care products is based upon said person's answers to said one or more questions implicitly. The Office Notice is taken that both the concept and the advantages of presenting the person with one or more questions relating to the presented image and the suggestion of skin care products is based upon the person's answers to said one or more questions are well known and expected in the art. It would have been obvious to Lucchina's clinical evaluations result also need to be based on the patience's answer after the patience review the face image, whether or not the skin worsening of acne after using a particular product so that the doctor can more accurately determine and suggest a good skin care product to treat the patience.

8. Claims 13-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucchina et al.

“Fluorescence photography in the evaluation of acne”, Journal of the American Academy of Dermatology Vol. 35, Number 1, pp. 58-63 in view of Martens et al. U.S. Patent 5,363,854.

Referring to claim 13, the Lucchina reference discloses all subject matter as discussed in respected to claim 7, except the Lucchina reference dos not explicitly disclose wherein said long pass filter substantially eliminates light having a wavelength below about 440 nm.

The Martens reference teaches in Figure 1, a method of photographing the skin of a person, said method comprising: capturing the image of said illuminated skin with a camera (video camera 12); wherein the light entering said camera is also filtered with a long pass filter (filter 123 has a transmission range of 450 to 490 nm which is above 400nm, see Col. 4, lines 44-46), wherein said long pass filter substantially eliminates light having a wavelength below about 440 nm (e.g., record the fluorescence picture at wavelength above the 440nm, see Col. 5, lines 33-45). The Martens reference is evidence that one of ordinary skill in the art at the time to see more advantages for a flexible design choice to selecting a various long pass filter to eliminates a wavelength below about a predetermined nm so that the device can be possible record image user different intensity and wavelength of the fluorescence light which determines to a considerable extent the color of the tissue (See Col. 5, lines 35-55). For that reason, it would have been obvious to the one of ordinary skill in the art at the time to modify the photography system of Lucchina for providing long pass filter substantially eliminates light having a wavelength below about 440 nm as taught by Martens.

Referring to claim 14, the Lucchina and Martens references disclose all subject matter as discussed in respected same comments to claim 13.

Referring to claim 15, the Lucchina and Martens references disclose all subject matter as discussed in respected same comments to claim 13.

Referring to claim 16, the Lucchina and Martens references disclose all subject matter as discussed in respected same comments to claim 13.

Referring to claim 17, the Lucchina reference discloses all subject matter as discussed in respected to claim 7, except the Lucchina reference dos not explicitly disclose wherein said

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subject is presented with an image showing only the green channel of the RGB image captured by said digital camera.

The Martens reference teaches in Figure 1, a method of photographing the skin of a person, said method comprising: capturing the image of said illuminated skin with a camera (video camera 12); wherein subject is presented with an image showing not just blue channel (wavelength at 435 or 490nm is blue channel, see Col. 3, line 68, Col. 4, lines 1-2 and Col. 5, lines 43-45) of the RGB image captured by the digital camera; and also can be only the green channel (wavelength at 550nm is green channel, see Col. 5, lines 52-55) of the RGB image captured by said digital camera. The Martens reference is evidence that one of ordinary skill in the art at the time to see more advantages for a flexible design choice to selecting an image showing only a channel of the RGB image captured by said digital camera, such as green or blue or red channel, so that the device can be possible record image user different intensity and wavelength of the fluorescence light which determines to a considerable extent the color of the tissue (See Col. 5, lines 35-55). For that reason, it would have been obvious to the one of ordinary skill in the art at the time to modify the photography system of Lucchina for providing an image showing only the green channel of the RGB image captured by said digital camera as taught by Martens.

Referring to claim 18, the Lucchina and Martens references disclose all subject matter as discussed in respected same comments to claim 17.

Referring to claim 19, the Lucchina and Martens references disclose all subject matter as discussed in respected same comments to claim 17.

Referring to claim 20, the Lucchina and Martens references disclose all subject matter as discussed in respected same comments to claim 17.

Referring to claim 21, the Lucchina and Martens references disclose all subject matter as discussed in respected same comments to claim 17.

Referring to claim 22, the Lucchina and Martens references disclose all subject matter as discussed in respected same comments to claim 17.

Referring to claim 23, the Lucchina and Martens references disclose all subject matter as discussed in respected same comments to claim 17.

Referring to claim 24, the Lucchina and Martens references disclose all subject matter as discussed in respected same comments to claim 17.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lin Ye whose telephone number is (571) 272-7372. The examiner can normally be reached on Mon-Fri 8:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David L. Ometz can be reached on (571) 272-7593. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Liy', with a long horizontal flourish extending to the right.

Lin Ye
Examiner
Art Unit 2615

January 30, 2006